

1 seeking a stay must also establish that the non-moving
2 party or other parties will not suffer substantial
3 harm if the stay is granted. In other words, the
4 moving party must show that the balance of harms tips
5 in favor of granting the stay."

6 Again, Adelphia Communications Corp.

7 In this case, if a stay of this court order enforcing
8 the plan injunction is granted, the state court action will not
9 be enjoined, and the liquidating trustee be -- will be forced
10 to continue defending the appellant's claim outside of this
11 court.

12 "The liquidation costs that would be required will
13 deplete the assets of the liquidating trust and
14 diminish recoveries for the debtors' creditors. This
15 constitutes substantial harm."

16 MF Global, 2012 WL 5386101.

17 The effect -- and I quote from that:

18 "The effect of a stay would increase potential
19 litigation costs and minimize return to the estate,
20 causing substantial injury which could otherwise be
21 avoided to the estate. This factor weighs against
22 granting a stay."

23 Public interest.

24 "The final factor considers the interest of third
25 parties who act in reliance on the Bankruptcy Court's

1 ruling."

2 In Re Moreau, 135 B.R. 209 (Bankr. N.D.N.Y. 1992).

3 "Consideration of the public interest factor may turn
4 on the finality of certain bankruptcy proceedings or
5 whether the importance of obtaining clarification of
6 the law requires the protection of a party's interest
7 during the appeal process."

8 WestPoint Stevens, 2007 WL 1346616 (S.D.N.Y. 2007).

9 "The public interest factor favors the expedient
10 administration of bankruptcy proceedings."

11 Adelphia Communications, In Re Savage Associates.

12 "In addition, there is a strong public interest in
13 maximizing the return to creditors in a bankruptcy."

14 MF Global, 2012 WL 5386101.

15 "Although there is also a public interest in ensuring
16 that matters are properly resolved on appeal, the
17 former interest outweighs the latter."

18 In Re Metiom, Inc., 318 B.R. 263 (S.D.N.Y. 2004).

19 Quote:

20 "This Court finds that the public interest in the
21 expeditious administration of bankruptcy cases, as
22 well as in the preservation of the bankruptcy assets
23 for the purpose of paying creditors, rather than
24 litigation of claims lacking a substantial possibility
25 of success, outweighs the public interest in resolving

1 the issues presented here on appeal."

2 The Court finds that the public interest weighs
3 against granting a stay. Each of the four factors weighs
4 against granting a stay pending appeal. The motion is denied.
5 Submit an order.

6 Very good. That finishes all our contested matters?

7 MS. SCHULTZ: No, Your Honor. That finishes the
8 contested matters wherein Akin Gump is representing the
9 liquidating trust. Mr. Oswald also has a matter set for
10 hearing.

11 THE COURT: Yes, I'm ready for that one.

12 MS. SCHULTZ: And I would ask, Your Honor, may I be
13 excused, since I'm not involved in that particular proceeding?

14 THE COURT: Yes, you may be excused.

15 MS. SCHULTZ: Thank you, Your Honor.

16 THE COURT: Thank you.

17 Yes, sir.

18 MR. OSWALD: Good afternoon, Your Honor. Frank Oswald
19 again for Togut Segal. My colleagues David Smith and Lara
20 Sheikh. Just as an overview -- and Mr. Davis is here,
21 obviously, for AIG.

22 THE COURT: Right.

23 MR. OSWALD: So I was last before you at the July
24 conference on the nine proofs of claim filed by AIG or its
25 predecessor, which might be known as Chartis and other names.

1 And the gravamen of what you heard at that hearing was we
2 needed to know what these claims were. And we've been trying
3 to get at what the claims -- the components, the amounts, and
4 the bases. And at Your Honor's direction, we sat in court and
5 negotiated a scheduling order that dealt with that piece, as
6 well as the matter that's in front of you today.

7 So let me just say, with regard to getting the claim
8 information, Mr. Davis did provide us with a comprehensive
9 letter in early August. We've got these two components of the
10 claim; basically, the workers' comp component, the malpractice
11 component.

12 The importance of the claims to the estate, of course,
13 is that there is collateral that's been posted with the non-
14 debtor affiliate. And to the extent that collateral is not
15 needed, that collateral will be released upstream to us and
16 distributed to the creditor body. It's a little less than \$40
17 million.

18 The Court has heard that, prior to the -- my firm
19 getting involved in what's now the contested claims, is that
20 the parties had a long, twenty-plus-year history of working
21 together to set reserves, look at these claims as they come
22 due.

23 And sometime, while the plan negotiations were hot and
24 heavy, the request to release some of the collateral at that
25 time to facilitate those negotiations and plan confirmation led

1 to a -- what I'll say is a renewed look at the reserves. And
2 we went from 10 million or so in reserves to 20 million. I
3 believe the current reserves now have been upped to close to --

4 THE COURT: I'm a little confused. This is not your
5 motion.

6 MR. OSWALD: Yes, this is -- well, I wanted to lay the
7 -- the way we left it was we would provide a position letter to
8 Mr. Davis regarding what the motion is about. And what the
9 motion is about whether or not certain of these claims are
10 subject to the collateral. And I was just leading to the --
11 how we got to today's motion.

12 THE COURT: Okay.

13 MR. OSWALD: If that's not helpful, I can stop on
14 that.

15 THE COURT: It's not helpful at this moment. It will
16 be helpful in a minute, but not at this moment. There are some
17 things I want to ask first.

18 MR. OSWALD: Uh-huh.

19 THE COURT: And I'm going to let you answer at counsel
20 table. But the first thing I'm going to do is I want to do a
21 factual background, and I want to be corrected if my factual
22 background is wrong. And you were beginning to repeat some of
23 that. So I want y'all to listen carefully.

24 So Saint Vincents Catholic Medical Center of New York,
25 and often referred to as "SVCMC," or the debtors, was formed

1 pursuant to a merger in 2000, between Catholic Medical Center;
2 "CMC," and Saint Vincents Hospital, "CVH" [sic], and multiple
3 other entities. The multiple other entities, we're not
4 necessarily dealing with; it had nothing to do with this. Am I
5 correct?

6 MR. DAVIS: As to the other entities, they have
7 nothing to do with today's motion.

8 THE COURT: For the purpose of this motion, the
9 relevant predecessor entities are Catholic Medical Center and
10 Saint Vincents Hospital. And you've just confirmed that.

11 AGI -- AIG, excuse me, began providing commercial
12 insurance to both Catholic Medical Centers and Saint Vincents
13 Hospital in the '90s, 1990s.

14 MR. DAVIS: Yes, Your Honor.

15 THE COURT: AIG's insurance relationship with these
16 entities continued until Catholic Medical Centers and Saint
17 Vincents Hospital merged to become what would later be the
18 debtors in 2000.

19 MR. DAVIS: Yes, Your Honor.

20 THE COURT: Post-merger, AIG continued providing
21 insurance for the debtors. In the debtors' first bankruptcy
22 case, filed in 2005, the debtors assumed the contracts relevant
23 to AIG and Saint Vincents Catholic Medical Centers.

24 MR. DAVIS: Yes, Your Honor.

25 THE COURT: So that insurance relationship continued.

1 MR. DAVIS: Yes.

2 THE COURT: So during the course of the debtors'
3 second bankruptcy, multiple orders have been entered that
4 pertained to this insurance relationship.

5 MR. DAVIS: Yes. I wouldn't want to think that
6 they're broad in implication. They were specific to renewals.

7 THE COURT: Okay. This is the one I want to talk
8 about. A stipulation between AIG and the debtors was so
9 ordered by this Court on September the 9th, 2010. This
10 stipulation included a whereas clause stating the following:

11 "Whereas the debtors received a notice of premium due
12 for the policy periods ranging from April the 1st,
13 1995 and April the 1st, 1999, with respect to Chartis
14 Insurance Contract Nos. 209400, 209401, 209402,
15 209403, and its termed 'The 1995-1999 Prepetition
16 Insurance Program,' and on or about July the 9th,
17 2010, the debtors informed the insurer that the merits
18 of that amount sought was disputed."

19 So the parties agree that the present issue before
20 this Court relates to certain losses that were incurred by
21 Saint Vincents Hospital between 1999 -- excuse me -- 1995 and
22 1998; that these losses occurred before the merger that created
23 Saint Vincents Catholic Medical Center.

24 MR. DAVIS: Yes, Your Honor.

25 THE COURT: And the debtors do not dispute that AIG

1 has a claim against the debtors for this loss.

2 MR. OSWALD: Correct.

3 THE COURT: What the debtors dispute is whether AIG
4 has a direct claim against a non-debtor, wholly owned
5 subsidiary of the debtors, the QIL; Queensbrook Insurance,
6 Limited.

7 MR. OSWALD: Both whether there's a direct claim, and
8 we say the claim is against the debtors; and then, more
9 specifically, whether or not the QIL collateral backstops those
10 claims.

11 THE COURT: That's my next one. The debtors also
12 dispute whether AIG has a claim against any collateral held by
13 QIL.

14 MR. OSWALD: For that period.

15 THE COURT: For that period only.

16 MR. DAVIS: Your Honor, the term "collateral" can be
17 misconstrued. A letter of credit is, technically, not property
18 of the estate; and, therefore, I would prefer, for clarity,
19 that we say that we have a claim against the letter of credit.

20 THE COURT: And would you clarify that the Chartis
21 contracts are for the Saint Vincents Hospital losses?

22 MR. DAVIS: The issue today is for the Saint Vincents
23 Hospital losses, correct.

24 THE COURT: Okay. And QIL is a wholly owned insurance
25 subsidiary of the debtors. QIL is not a debtor in the

1 bankruptcy case, and it is prohibited from being a debtor under
2 Section 109 of the Bankruptcy Code.

3 QIL was created in 1998, prior to the merger of Saint
4 Vincents Catholic Medical Center. And at the time of the
5 formation, QIL was only a wholly owned subsidiary of Catholic
6 Medical Centers, a predecessor entity of Saint Vincents
7 Catholic Medical Center.

8 MR. OSWALD: That's correct.

9 MR. DAVIS: I can't disagree with some of those
10 particulars, but I didn't know the date of creation, nor did I
11 know the ownership prior to the merger. But I don't have any
12 reason to dispute it, either.

13 THE COURT: If you do so, I'd like to know in writing
14 soon.

15 MR. DAVIS: No, I -- I don't believe I do have a
16 reason to; I just don't happen to you know. You know, I --

17 THE COURT: Okay. So QIL was created for the express
18 purpose of paying all of Catholic Medical Centers deductibles
19 and losses to AIG, and Catholic Medical Center collateralized
20 its obligations to AIG with cash and letters of credit provided
21 by QIL, and that's called the "QIL Collateral," or referred to
22 as the "QIL Collateral."

23 MR. DAVIS: Again, I don't know that that was the only
24 purpose for which QIL was formed.

25 THE COURT: As of the petition date, two letters of

1 credit in AIG's favor aggregate thirty-seven million, eight
2 hundred and fifty-three dollars and seven -- excuse me -- eight
3 hundred and fifty-three thousand, seven hundred and two
4 dollars. And there was eighty-eight hundred and fourteen
5 thousand six hundred and eighty-four dollars [sic] being held.

6 MR. DAVIS: In cash.

7 THE COURT: In cash.

8 MR. DAVIS: I can't confirm the number, but I don't
9 have any reason to disagree with it, either. And I know it's
10 in -- in the order of magnitude, it's correct.

11 THE COURT: The letters of credit and cash act as a
12 reserve for any losses incurred by AIG. And every year, AIG
13 has designated a certain amount of the QIL collateral to be
14 held in reserve.

15 MR. DAVIS: Your Honor, could you repeat that? I'm
16 not sure I understand it.

17 THE COURT: Sure. I'd be delighted.

18 These letters of credit -- and again, that was the
19 petition date, but just referring to the letters of credit in
20 general -- and cash act as a reserve for any losses occurred --
21 incurred by AIG. And every year, AIG has designated a certain
22 amount of QIL collateral to be held in reserve.

23 MR. DAVIS: Two comments about that.

24 THE COURT: Okay.

25 MR. DAVIS: First is, it's designated as security.

1 I'm not sure I know what the word "reserve" means, and I could
2 be -- it could have more than one meaning.

3 And second, each year, upon renewal or approximately,
4 the parties agreed on the amount. It wasn't designated by AIG;
5 it was an agreement. I can show you an example. There's one
6 annexed to the motion.

7 THE COURT: Okay. And based on the debtors' papers,
8 as of June the 30th, 2011, AIG and the debtors agreed to
9 establish total reserves in the amount of forty percent of the
10 QIL collateral, which was approximately \$16 million.

11 MR. DAVIS: I don't know that at all, Your Honor. And
12 our present position is that the reserve requirements are
13 considerably higher, particularly given that medical
14 malpractice claims were stayed by this -- by this case; and
15 therefore, the growth in medical malpractice exposure has been
16 unpredictable.

17 THE COURT: That was as of 2011.

18 MR. DAVIS: I don't know, Your Honor. I don't know
19 that fact.

20 THE COURT: Okay. And then the --

21 MR. OSWALD: From the debtors' perspective, Your
22 Honor, the June 30 numbers are agreed-upon numbers, as was done
23 --

24 THE COURT: And do you have --

25 MR. OSWALD: -- in the ordinary course.

1 THE COURT: -- documentation on that?

2 MR. OSWALD: I'm sure we do.

3 THE COURT: Okay. If you'll make sure he sees it.

4 But then the debtors' papers also have indicated that
5 AIG has increased reserves to approximately 22.5 million by
6 February the 28th, 2013. And it seems the amount of reserve
7 held by AIG has increased even more, and may be at 31.8 million
8 by August the 8th, 2013.

9 MR. DAVIS: And the word "reserves" has an ambiguity
10 in it, and that's, I think, what the problem may be, in terms
11 of why those numbers seem striking.

12 There are two kinds of reserves; there are incurred
13 reserves, and there are reserves for losses that are incurred,
14 but not reported. The incurred reserves are the number that
15 the parties measure and can agree upon and can identify, and
16 it's based on known claims and known facts.

17 In addition to that, actuaries do predictions for
18 losses that are either not reported or under-reported, or
19 subject to loss development. And either of those --

20 THE COURT: I heard you.

21 MR. DAVIS: Either of those can be reserves.

22 THE COURT: I'm doing big picture. I heard you.

23 MR. DAVIS: Yeah.

24 THE COURT: The key dispute between the parties is
25 whether the Saint Vincents losses are covered under any

1 agreement between AIG and Saint Vincents Catholic Medical
2 Centers as successor to the Catholic Medical Center, the
3 original party who entered into the agreement with QIL.

4 AIG concedes that Saint Vincents Hospital was never a
5 party to the relevant agreements. Instead, AIG then argues
6 that Saint Vincents Hospital merged into Saint Vincents
7 Catholic Medical Center, and Saint Vincents Catholic Medical
8 Center renewed the policy year after year. As a result, AIG
9 states that it can draw down on the QIL letters of credit as a
10 reserve against Saint Vincents Hospital's losses.

11 MR. DAVIS: Your Honor, there are two explicit
12 provisions which I'd like to point to, which support that
13 conclusion.

14 THE COURT: Okay.

15 MR. DAVIS: Do you want to do that now?

16 THE COURT: We'll get there.

17 MR. DAVIS: Okay.

18 THE COURT: We'll get there.

19 In a stipulation between the debtors and AIG dated
20 September the 10th, 2010, the parties agreed to a new
21 arbitration agreement for all claims that AIG has against the
22 debtor, except -- and I want to read this carefully. So there
23 was a stipulation between the debtor and AIG dated September
24 the 10th, 2010.

25 The parties agreed to a new arbitration agreement for

1 all claims that AIG had against the debtor, except, however --
2 and this goes back to what I said at the beginning -- Chartis
3 Insurance Contract Nos. 209400, 209401, 209402, and 209403 are
4 expressly precluded from the arbitration agreement, and the
5 parties expressly reserve their respective rights, if any, with
6 respect to those contracts and claims, if any, thereunder;
7 including, without limitation, the insurer's right to seek
8 arbitration of all -- of any alleged disputes arising from or
9 relating to the 1995-1999 prepetition insurance program,
10 separately or in conjunction with any arbitration, pursuant to
11 the arbitration agreement and the rights of the debtors and
12 other parties-in-interest to object to such arbitration. In
13 other words, the present claim is issue -- at issue is the only
14 claim that is not in arbitration and part of the QIL
15 collateral. Is that correct?

16 MR. DAVIS: No. The conclusion is not correct. The
17 facts are correct. The -- we have the right to arbitration in
18 a preexisting agreement and in a separate agreement. We have
19 it in two agreements, both of which I can show Your Honor. And
20 the new arbitration agreement doesn't cover it, has no -- and
21 as you correctly point out, the new arbitration agreement is
22 not a basis to seek arbitration, nor is it mentioned in our
23 papers, except to point out that we're not relying on it. It's
24 the old arbitration --

25 THE COURT: I think you misunderstood.

1 MR. DAVIS: Okay.

2 THE COURT: Let me reread it.

3 In a stipulation between the debtors --

4 MR. DAVIS: Uh-huh.

5 THE COURT: -- and AIG, dated September the 10th,
6 2010, the parties agreed to a new arbitration agreement for all
7 claims that AIG has against the debtor, except those Chartis
8 Insurance contracts that I read --

9 MR. DAVIS: Right. I understand everything you read,
10 Your Honor, was correct. It was the -- when you said
11 "therefore," and you stated a conclusion that I disagreed with
12 the conclusion.

13 THE COURT: I didn't state "therefore," I said
14 "however."

15 MR. DAVIS: Well, perhaps --

16 THE COURT: There was no "therefore" in that sentence.

17 MR. DAVIS: But after you -- after you were done
18 quoting it, you then said -- added an additional sentence. It
19 was the additional sentence.

20 THE COURT: In the -- "in other words," is what I
21 said.

22 MR. DAVIS: Right.

23 THE COURT: The present claims at issue are the only
24 claims that are not in arbitration and part of the QIL
25 collateral. That's all I said.

1 MR. DAVIS: I don't understand that sentence, but I
2 would -- I would say that the present claims are subject to the
3 QIL collateral and are subject to arbitration, and I'm prepared
4 to show why both of those statements are our position.

5 THE COURT: Okay. I have questions for you. I'm not
6 here for arguments, I'm here for questions.

7 MR. DAVIS: Okay.

8 THE COURT: I want you both to answer this, but I want
9 you to go first.

10 MR. DAVIS: Certainly.

11 THE COURT: Are the Saint Vincents Hospital losses
12 related to the Chartis Insurance Contracts 209400 through
13 209403, for policy periods ranging from April the 1st, 1995
14 through April the 1st, 1999?

15 MR. DAVIS: Those are exactly the -- the losses we're
16 putting at issue in this motion.

17 MR. OSWALD: Correct, Your Honor.

18 THE COURT: Okay. For you, AIG. Is this properly
19 before the Court as a contested matter? What about Rule 7001,
20 which is what is an adversary? And aren't you asking for a
21 declaratory judgment that the QIL letters of credit are
22 security for your claim, and why does this not require an
23 adversary?

24 MR. DAVIS: Your Honor, we didn't wish to bring this
25 motion; we were ordered to bring this motion. We do not think

1 this Court has jurisdiction today.

2 THE COURT: All right.

3 MR. DAVIS: And we certainly think the Court lacks
4 jurisdiction over the counterclaim.

5 THE COURT: The scheduling order said it was a
6 contested matter. Do you both agree that the issue before the
7 Court can be resolved by way of a contested matter, instead of
8 an adversary?

9 MR. OSWALD: I do, Your Honor. I mean, again,
10 harkening back to the July conference and the several issues
11 that were raised there, first and foremost was getting a clear,
12 concise statement of the claims, together with the backup. And
13 then we indicated as an initial -- because, as I said before,
14 once we got a clear and concise statement of the claims with
15 the backup, the parties might not be as far apart as we thought
16 we were.

17 One example, Your Honor, is on the workers'
18 compensation component, where in a gross amount, I think the
19 parties are in a ten-million-dollar claim range, Your Honor.

20 THE COURT: But we agree we're okay on the contested
21 matter.

22 MR. OSWALD: Well, that was the purpose of sitting
23 there and negotiating and agreement. And again, the process
24 that we agreed to was we would provide -- they would provide us
25 with a clear and concise statement of the claim with the

1 backup. We would provide them with a position statement, vis-
2 a-vis this particular piece of the claim, this 1995 to '99, A,
3 why we thought it was not the subject of the QIL collateral; B,
4 why the Court retained the jurisdiction.

5 THE COURT: Okay.

6 MR. OSWALD: It harkens back to the stipulation,
7 specifically reserving, if you will.

8 We conceded last time, Your Honor may recall, we don't
9 come here to say all disputes with the insurance company are
10 properly before this Court. Mr. Davis properly indicated --

11 THE COURT: Okay. We'll get a chance to argue.

12 MR. OSWALD: Yeah.

13 THE COURT: I'm asking one specific question.

14 MR. DAVIS: I --

15 MR. OSWALD: But we believe the Court -- we believe
16 that's what --

17 THE COURT: We're on a contested matter.

18 MR. OSWALD: -- the parties agreed to. And the
19 parties --

20 THE COURT: You brought it. I don't know how you can
21 argue against it.

22 MR. DAVIS: Your Honor, we were -- we were ordered to
23 bring it, and we're not going to argue against it. But if it's
24 incorrect, it is -- it stands where it stands.

25 THE COURT: Okay. That's all I need to know.

1 Do you two parties agree on the amount of Saint
2 Vincents Hospital's losses?

3 MR. DAVIS: I don't know that we've ever discussed it.
4 They specifically sent us --

5 MR. OSWALD: Yeah, I don't think we've gotten down to
6 the penny, but I think that -- we think this piece of the
7 losses is about \$2 million.

8 MR. DAVIS: So do we.

9 MR. OSWALD: And I think they think they're in that
10 range, too. I can't -- I don't think we've come to the
11 specific dollar amount, but certainly --

12 THE COURT: It's there.

13 MR. OSWALD: -- from what we're hearing from both
14 clients, the dollar amount is not really going to --

15 MR. DAVIS: We stated the dollar amount --

16 MR. OSWALD: -- hold us up on the issue.

17 MR. DAVIS: -- in the statement that the court ordered
18 us to provide on August 8th, and there's been no push-back to
19 that number.

20 THE COURT: Does AIG have an ability to draw down on
21 the letters of credit unilaterally?

22 MR. DAVIS: We think we do, actually, because it's not
23 property of the estate, it's not governed by the automatic
24 stay. But we choose not to because we don't want to act
25 unnecessarily in a contested -- in a controversial way. We're

1 hoping to keep --

2 THE COURT: Yeah, you heard the ruling before.

3 MR. DAVIS: Yeah.

4 THE COURT: Okay. Is cash actually transferred to an
5 escrow account?

6 MR. DAVIS: Which cash? The letter of credit hasn't
7 been drawn.

8 THE COURT: At all.

9 MR. DAVIS: At all.

10 MR. OSWALD: That's correct.

11 MR. DAVIS: And by the way, the debtors' name does not
12 appear on the letter of credit at all. It's not issued at the
13 request of a letter of the debtor, it isn't issued with the
14 debtor as a beneficiary, it isn't issued with the debtor as an
15 account party, it --

16 THE COURT: So the reserve is basically a book entry;
17 is that what I've got?

18 MR. DAVIS: Reserves are a book entry, but they can --
19 you can also have a cash reserve. In this case, I'm not sure
20 how to answer your question, Your Honor. I just don't
21 understand the question.

22 MR. OSWALD: Well, from our side of the table, Your
23 Honor, I think they first have to establish a valid claim
24 before you can seek the remedies. Remember, this is collateral
25 for Saint Vincents' claim. My understanding is that other

1 losses, other parts of the claims over the years have been paid
2 by Saint Vincents --

3 THE COURT: Okay. You're going to have to --

4 MR. OSWALD: -- the primary obligor.

5 THE COURT: When you say something to me, you're going
6 to have to -- when you say something to me, you're going to
7 have to define "Saint Vincents Hospital," "Saint Vincents
8 Medical Center."

9 MR. OSWALD: All right. Judge --

10 THE COURT: Too many Saint Vincents --

11 MR. OSWALD: Yes.

12 THE COURT: -- running around here.

13 MR. OSWALD: Saint Vincents Medical Center, the
14 debtors --

15 THE COURT: The merged entity --

16 MR. OSWALD: Right.

17 THE COURT: -- in 2000 --

18 MR. OSWALD: Yes.

19 THE COURT: -- that went through bankruptcy and were
20 now the debtors.

21 MR. OSWALD: Yes.

22 THE COURT: Okay.

23 MR. OSWALD: Apologize, Your Honor.

24 THE COURT: Just be clear --

25 MR. OSWALD: And --

1 THE COURT: -- with me.

2 MR. OSWALD: I will. And against whom these proofs of
3 claims were filed.

4 MR. DAVIS: Your Honor --

5 MR. OSWALD: But we agree that there's been no draw on
6 the letter of credit.

7 MR. DAVIS: We --

8 MR. OSWALD: And I -- and we agree that the debtor
9 Saint Vincents Medical Center is not a party to that letter of
10 credit.

11 THE COURT: Okay. There's my question.

12 MR. OSWALD: Okay.

13 MR. DAVIS: Yeah, we -- Your Honor, we have claims
14 both against QIL and against the debtors. And we haven't --

15 THE COURT: Don't get ahead of --

16 MR. DAVIS: -- drawn the letter of credit for either.

17 THE COURT: -- my questions, either one.

18 MR. DAVIS: Okay.

19 THE COURT: I have --

20 MR. DAVIS: I'll try not to.

21 THE COURT: I'm linear, so you got to help me here.

22 MR. DAVIS: I'll do the best I can.

23 THE COURT: Does everyone agree that the AIG claims
24 are not secured by any property of the debtors with respect to
25 Code Section 541? Do you want me to read it to you?

1 MR. DAVIS: No, I know the -- I don't know of any. I
2 mean, Your Honor, the -- it's -- it's conceivable the debtor
3 might -- we might owe money to the debtor for some purpose, for
4 which we would have an offset, but I don't know of any, and
5 none is asserted at this time.

6 The security we're claiming, the security at issue
7 here today, is the letter of credit and the \$800,000 that QIL
8 provided.

9 THE COURT: Debtor?

10 MR. OSWALD: Correct.

11 THE COURT: Okay. Does anyone agree [sic] that the
12 QIL letters of credit are not property of the estate?

13 MR. DAVIS: I'm sorry. That was a double-negative.
14 I'm sorry. Would you read it again?

15 THE COURT: I don't think it was a double-negative.

16 MR. DAVIS: I -- I got confused. My mistake -- my
17 bad. Could you just tell me --

18 THE COURT: Yeah. Does everyone agree that the QIL
19 letters of credit are not property of the estate?

20 MR. DAVIS: Yes.

21 THE COURT: There's no double-negative in there.

22 MR. DAVIS: You're absolutely right, there's no
23 double-negative. And I agree with that statement.

24 MR. OSWALD: That's correct. The letter of credit is
25 QIL's. And again, we -- our interest is the interest in the

1 excess --

2 THE COURT: So -- so you --

3 MR. OSWALD: -- letter of credit, the collateral.

4 THE COURT: -- have nothing to rebut that. Okay.

5 Does Section 506(a) control whether there is an
6 allowed secured or allowed unsecured claim in the Bankruptcy
7 Court?

8 MR. OSWALD: We believe it does, Your Honor.

9 THE COURT: AIG?

10 MR. DAVIS: You mean in general or -- or as in this
11 case?

12 THE COURT: Does 506 control whether there is an
13 allowed secured or unsecured claim in the bankruptcy case, in
14 this case? We're only talking --

15 MR. DAVIS: Against property of the estate?

16 THE COURT: -- about this case.

17 MR. DAVIS: Yes.

18 THE COURT: I'm not here for a philosophical
19 discussion.

20 MR. DAVIS: Thank you. Yeah, we would agree that 506
21 would -- would govern whether there's a secured claim against
22 property of the estate.

23 THE COURT: So both of you, does that mean -- doesn't
24 that mean that all claims are unsecured for the purpose of the
25 bankruptcy case, and that AIG has a contractual right outside

1 of bankruptcy to enforce their rights against collateral
2 wherever that collateral might lie?

3 MR. DAVIS: Yes, Your Honor, we think so.

4 (Participants confer.)

5 MR. OSWALD: Provided that --

6 THE COURT: You can let the associate --

7 MR. OSWALD: Well --

8 THE COURT: -- argue, if you want to.

9 (Laughter.)

10 MR. OSWALD: Provided -- but provided the claims are -
11 - as my colleague reminds me, provided that the claims are
12 arising under that payment agreement, the 1998 payment
13 agreement.

14 THE COURT: Answer that question. You mean all claims
15 for unsecured purposes of the bankruptcy case. Doesn't that
16 mean that all claims are unsecured for the purposes of the
17 bankruptcy claims, with AIG having contractual rights outside
18 of bankruptcy to enforce their rights against collateral,
19 wherever that collateral may lie?

20 (Participants confer.)

21 MR. OSWALD: Ms. Sheikh can respond. She knows the --

22 THE COURT: Thank you.

23 MR. OSWALD: She knows the payment agreement --

24 THE COURT: State your name for the record.

25 MR. OSWALD: -- better than I do.

1 MS. SHEIKH: Lara Sheikh of Togut, Segal & Segal for
2 the liquidating trust.

3 Your Honor, AIG is enforcing its rights under a cross-
4 collateralization agreement that provides that obligations
5 between CMC and AIG and the agreements between --

6 THE COURT: For the record, say "Catholic Medical
7 Centers." I do not like acronyms.

8 MS. SHEIKH: Oh, I apologize. There's a -- there is a
9 cross-collateralization agreement that was entered into in
10 1998, concurrently with the 1998 payment agreement, between AIG
11 and Catholic Medical Centers, the predecessor to Saint Vincents
12 --

13 THE COURT: Saint Vincents Medical Center.

14 MS. SHEIKH: -- Catholic Medical Center --

15 THE COURT: Okay. Catholic Medical Center.

16 MS. SHEIKH: -- of New York.

17 THE COURT: Okay. It's not a question of whether they
18 can assert the right. The issue is whether 506(a) applies; and
19 thus, whether the claims are secured or unsecured in
20 bankruptcy. That's the question.

21 MS. SHEIKH: I agree, Your Honor. And I had
22 understood that there was a separate question as to whether AIG
23 could --

24 THE COURT: Can enforce those. That is.

25 MS. SHEIKH: Enforce --

1 THE COURT: But answer the first one --

2 MS. SHEIKH: I see. Yes, I -- I agree that the
3 question is whether AIG's claims are secured or unsecured under
4 506 of the Bankruptcy Code.

5 THE COURT: Okay. And then, once -- and if they are
6 unsecured, because when -- if 506 controls, doesn't that mean
7 that all claims are unsecured for the purposes of the
8 bankruptcy case? That's what I said, because we said yes to
9 that. If 506 controls, does AIG have a contractual right
10 outside of bankruptcy to enforce their rights against the
11 collateral, wherever that's found? And you said yes to the
12 first part of that, so --

13 MS. SHEIKH: Oh, actually, let me clarify then. I may
14 have misunderstood.

15 THE COURT: And so you didn't answer.

16 MS. SHEIKH: I do not believe --

17 THE COURT: Yeah.

18 MS. SHEIKH: Yeah. I don't believe that all of AIG's
19 claims are unsecured. A portion of AIG's claims are secured.

20 THE COURT: Okay. What controls, though? You're
21 saying no. So what controls that? Secured by what?

22 MS. SHEIKH: They are secured by collateral that was
23 provided by a non-debtor, QIL, under the agreements that were
24 entered into with the debtors' predecessor.

25 THE COURT: We're only talking about property of the

1 estate. Is it secured by property of the estate?

2 MS. SHEIKH: The collateral is not property of the
3 estate, that is correct.

4 THE COURT: So it's not secured by property of the
5 estate.

6 (Participants confer.)

7 MS. SHEIKH: That's correct.

8 THE COURT: Okay. Then my question, debtors: Upon
9 what basis can this Court exercise jurisdiction over this non-
10 debtor entity?

11 MR. OSWALD: We believe the nexus is the debtors'
12 interest in that letter of credit. In other words, as I said
13 earlier, to the extent that --

14 THE COURT: Does it matter that the QIL letter of
15 credit is not property of the estate?

16 MR. OSWALD: I don't think it --

17 THE COURT: Aren't you just a holder of that? It's
18 still a claim.

19 MR. OSWALD: Well, we -- we believe there's enough of
20 a nexus there between the Saint Vincents Catholic Medical
21 Center debtor and its interest in that letter of credit and the
22 collateral that backs up that letter of credit to give this
23 Court jurisdiction.

24 MR. DAVIS: We, of course, disagree. And I would
25 characterize the situation somewhat differently. The debtor

1 does not actually have an interest in the residual dollars that
2 might be available from non -- not depleting the letter of
3 credit. The debtor owns the shares of QIL. And those dollars
4 might end up being the source of a dividend. But what the
5 debtor owns are the shares of QIL. And the Second Circuit has
6 been clear, time and again, that owning shares does not give
7 you jurisdiction over the property of the entity in which you
8 own shares.

9 THE COURT: Do you wish to add anything? I need you
10 to respond to what -- I'm sorry ...

11 MR. OSWALD: Yeah, again, we think, based upon the
12 support -- the arguments we made in the papers --

13 THE COURT: -- what Mr. Davis said. I wanted to call
14 him "David." What Mr. Davis said.

15 MR. DAVIS: People have called me that from time to
16 time. I don't mind.

17 THE COURT: I'm sorry, I didn't hear --

18 MR. OSWALD: No, I didn't have anything to add other
19 than my earlier argument, Your Honor, what we said in the
20 papers.

21 THE COURT: You don't have any response to what Mr.
22 Davis just said?

23 MR. OSWALD: No. We believe that you have -- the
24 requisite nexus is there, and this Court has -- can determine
25 whether or not this piece of the claim, the two-million-dollar

1 piece or thereabouts, is secured or not.

2 THE COURT: And it doesn't matter that QIL is not a
3 debtor --

4 MR. OSWALD: Right.

5 THE COURT: -- cannot be a debtor. All right.

6 For both of you, I have this question. Filing a proof
7 of claim raises core jurisdiction under the allowance or
8 disallowance of a claim. Are we core or are we non-core? What
9 have we got here?

10 MR. DAVIS: The issue of the allowance of our claim
11 against the property of the estate is a core proceeding;
12 however, the Hagerstown case, among others, holds that, even as
13 a core proceeding, disputes about that claim would be subject
14 to arbitration. But that's not the issue today. The issue --

15 THE COURT: That's right --

16 MR. DAVIS: Yeah.

17 THE COURT: -- it's not, so ...

18 MR. DAVIS: Yeah. The issue today is: Are we core
19 with respect to the claim against QIL? No. We're not only not
20 core, we're not even within the Court's jurisdiction at all.

21 MR. OSWALD: Well, again, we believe we are
22 substantial core under the Hostess line of cases. We think
23 Hagerstown was on point, as well. You do have these nine
24 claims. The component of --

25 THE COURT: I -- and before you go -- Mr. Davis, why?

1 Tell me why.

2 MR. DAVIS: Why which? I'm sorry.

3 THE COURT: Well, by your statement, I want to know
4 why. Repeat your statement to me. I can't -- I --

5 MR. DAVIS: Oh, why --

6 THE COURT: Why was coming up, and my brain went off
7 because Mr. Oswald spoke.

8 MR. DAVIS: I'm sorry. I'm not sure what statement
9 you're referring me back to. But if it was --

10 THE COURT: If I'm determining a claim --

11 MR. DAVIS: Yes.

12 THE COURT: -- and you think -- don't think that's --
13 that's the --

14 MR. DAVIS: You can determine the amount of the claim.

15 THE COURT: Right.

16 MR. DAVIS: Unless there's an arbitration clause,
17 which the enforcement of which does not conflict with the
18 Bankruptcy Code.

19 In the Hagerstown case, the Thorpe case in the Ninth
20 Circuit, the U.S. Lines case in this circuit, the series of
21 cases, which as the Thorpe Court said the sister circuits have
22 all agreed upon. The established rule -- and we -- I think
23 pretty much universally now is that bankruptcy courts do not
24 have discretion to refuse arbitration unless the Bankruptcy
25 Code itself implicates what the rights of the parties are, as

1 distinguished from the procedural matter.

2 In Hagerstown, this Court, the Southern District, said
3 you have procedurally core matters which must be allowed to
4 arbitrate, and you have substantively core matters which are
5 not. I can go on, on this. I'm not sure, I may be over-
6 answering your question, but --

7 THE COURT: That's the second issue. I'm on the first
8 issue.

9 MR. DAVIS: Yeah.

10 THE COURT: I'm on procedural of core and non-core,
11 and whether or not this Court is asked to allow or disallow a
12 claim right now.

13 MR. DAVIS: Yeah. A claim is procedurally core if the
14 substantive rights being adjudicated are derived from non-
15 bankruptcy law. A claim is core if the substantive rights
16 being adjudicated are derived from bankruptcy law. That's why
17 Hostess, which was adjudicating access to cash collateral --

18 THE COURT: I --

19 MR. DAVIS: -- which is governed by --

20 THE COURT: I got that Hostess.

21 MR. DAVIS: Yeah. Yeah.

22 THE COURT: Let me take a look. Okay.

23 MR. DAVIS: Like 503(c), the issue is governed by bank
24 -- by the Bankruptcy Code.

25 In Hagerstown, you had claims, some of which were

1 governed by the Bankruptcy Code, and some of which were not.

2 In the Continental case that they write about in their
3 brief, the issue was: Did the debtor have -- I'm sorry -- did
4 the claimant-creditor have a claim because -- based on the fact
5 that the plan violated the contract? And the Court said, well,
6 of course that's core because the question is does the plan
7 violate the contract.

8 So the line that's been drawn by the circuit courts
9 throughout the country, I think uniformly now, is that if the
10 underlying right is derived from non-bankruptcy law, then
11 arbitration continues to control; and if the underlying right
12 is derived from the Bankruptcy Code, then it's not.

13 THE COURT: Mr. Oswald, can you cite -- can the debtor
14 cite that core jurisdiction extends to whether a claim is
15 secured or unsecured when the application of 506(a) is not at
16 issue?

17 MR. OSWALD: Well, but again, Your Honor, we think --
18 yeah, they have filed their proofs of claim here. A component
19 of the proofs of claim covers this period of 1995 to 1999. The
20 payment agreement is relied upon by AIG in support of that
21 claim. Saint Vincents Hospitals -- not Saint Vincents Medical
22 Center -- the pre-merged entity is not a party to that
23 agreement.

24 And again, the threshold issue before any creditor
25 seeks relief against collateral or gets paid even on an

1 unsecured claim is establishing what that claim is and the
2 character of that claim. And I think that's what this Court
3 does. I think, frankly, that's what the Eighth Circuit, that
4 Thorpe case indicated, that the proofs of claim implicate the
5 bankruptcy, and the jurisdiction and the distribution issues to
6 creditors, and that was part of that rationale.

7 THE COURT: Well, Mr. Davis, how can you -- but this
8 is a -- let me go back for a second, though, before I go to Mr.
9 Davis. This is a non-debtor, non-property-of-the-estate
10 collateral. Why is that core jurisdiction? Based just on
11 filing of the proof of claim?

12 MR. OSWALD: Again, the collateral is backing up a
13 claim of a debtor, proof of claim filed against the debtor --

14 THE COURT: Well, just a moment on that.

15 MR. OSWALD: Uh-huh.

16 THE COURT: Backing up the claim of a debtor who is
17 the equity holder of that non-debtor?

18 MR. OSWALD: The --

19 THE COURT: Your associate wants to say something;
20 she's itching.

21 (Laughter.)

22 MS. SHEIKH: Well, Your Honor, I think that it's
23 important to recognize that the resolution of the SVH losses is
24 one component of numerous claims that have been asserted by
25 AIG; that they assert are all secured by collateral, which was

1 provided by a non-debtor, QIL. And we believe that they are --

2 THE COURT: But today, we're only --

3 MS. SHEIKH: -- over-secured --

4 THE COURT: -- on these four claims.

5 MS. SHEIKH: That's correct.

6 THE COURT: Today, we're only four claims.

7 MS. SHEIKH: That's correct. But I -- I -- when you

8 read the Hostess decision --

9 THE COURT: I -- okay.

10 MS. SHEIKH: -- in particular --

11 THE COURT: I've got it right here.

12 MS. SHEIKH: -- I think that -- and we didn't -- we

13 didn't fully address in our cross-motion and our response to

14 the motion this issue of turnover, which will be an ultimate

15 issue, once AIG's claim against the estate is fixed, and we'll

16 --

17 THE COURT: I guess I'm trying to get nexus more

18 clearly today.

19 MS. SHEIKH: Right. So the core --

20 THE COURT: And that's my question.

21 MS. SHEIKH: Right. The substantially core issue

22 within -- kind of as the case law has developed in the Second

23 Circuit is the ultimate issue, which is: What is the secured

24 claim that AIG has against the estate? And we -- and we

25 believe that that is an issue that's within this Court's core

1 jurisdiction to determine, to what extent AIG has a secured
2 claim.

3 And I am not aware of any case law that -- that any of
4 the -- the case law cited by AIG for the proposition that a
5 letter of credit is not property of the estate, we don't
6 dispute that. But I don't think those cases address what
7 portion of a claim that a party has against the -- an estate --
8 a debtor's estate is secured by a letter of credit.

9 THE COURT: Mr. Oswald, do you want to add?

10 MR. OSWALD: Again, just to crystalize it, you're
11 right.

12 THE COURT: Okay.

13 MR. OSWALD: We're dealing with, just for today, this
14 one issue on these four claims.

15 THE COURT: Right.

16 MR. OSWALD: Claims against the debtor, and whether or
17 not they are secured or unsecured. Granted, the security sits
18 with the non-debtor sub.

19 THE COURT: Right. Right.

20 MR. OSWALD: Okay? You don't pay out on the claim,
21 the security comes to the debtors and its creditors.

22 THE COURT: And that non-debtor sub, the debtors
23 basically only hold an equity interest in it.

24 MR. OSWALD: Yes.

25 THE COURT: Okay.

1 MR. DAVIS: And if I may --

2 MR. OSWALD: And then -- and then just add for the --
3 I think that, not only the Hagerstown, but the Hostess -- Your
4 Honor said you have the Hostess decision there. But the other
5 factors that go into substantially core and whether the parties
6 did agree to arbitrate, again, that's one of the reasons that
7 that stipulation that Your Honor referred to before has the
8 exclusion is this issue, I presume it was on the radar. And
9 you'll notice our firm wasn't a party to that stipulation;
10 Kramer handled that. But that's why we dispute that that -- on
11 this core -- this issue was not subject to the arbitration
12 agreement.

13 THE COURT: And Mr. Davis, how can you separate the
14 allowance of your proof of claim in the bankruptcy case from
15 the determination of whether the QIL letters of credit secure
16 the claim.

17 MR. DAVIS: It's -- really, it's something that
18 happens all the time, when you have a guarantor, Your Honor.
19 The amount of our claim will be fixed by this Court, to the
20 extent it's a general unsecured claim. And that issue may,
21 itself, be subject to arbitration, but that's not subject to
22 today's discussion. I can show you there is an arbitration
23 clause.

24 Should we have a dispute about the amount of that
25 claim, and we don't seem to, we would have -- we would have a

1 right to arbitrate that dispute, also, because it's purely a
2 matter of contract, it has nothing to do with bankruptcy law
3 whether the amount of that claim is 2 million or 2.2 million,
4 or whatever the disagreement might be, if there is a
5 disagreement.

6 I would point out, by the way, we're in arbitration
7 with the debtors right now.

8 THE COURT: We know you are.

9 MR. DAVIS: Yeah.

10 THE COURT: We've already said that.

11 MR. DAVIS: Yeah, and --

12 THE COURT: Everything -- we're only here on these
13 four.

14 MR. DAVIS: And --

15 THE COURT: Does it affect the value of the debtors'
16 asset if your claim is secured or unsecured?

17 MR. DAVIS: Only -- if they own shares in any company,
18 if they owned shares in Apple Computer, and Apple Computer has
19 a litigation with somebody, it would affect the value of the
20 estate, whether Apple prevails or loses in that -- in that
21 dispute. That doesn't give this Court jurisdiction over a
22 dispute between Apple and Samsung, just because they're a
23 shareholder in Apple.

24 THE COURT: This is --

25 MR. DAVIS: And that's what --

1 THE COURT: This is -- this is --

2 MR. DAVIS: -- the Second Circuit --

3 THE COURT: -- a bankruptcy case.

4 MR. DAVIS: And that --

5 THE COURT: We're talking about a bankruptcy case.

6 MR. DAVIS: That's what we -- but we are talking about

7 that. If --

8 THE COURT: Apple is not in bankruptcy.

9 MR. DAVIS: No. Your Honor, please. If Saint Vincent

10 owned shares in Apple, and Apple has a multi-billion-dollar

11 dispute with Samsung -- and they do, if I got that correct in

12 my head -- that multi-billion-dollar dispute could affect the

13 value of their holdings in Apple. But that doesn't give this

14 Court any jurisdiction over the dispute between Apple and

15 Samsung because all they are, are a shareholder.

16 The Second Circuit has said time and again --

17 THE COURT: What case? Give me a case when you say

18 that.

19 MR. DAVIS: The case -- it's the Beck v. Feldman case

20 that we cited in our brief, and then I would cite you to --

21 THE COURT: Does it make a difference that QIL is

22 wholly owned?

23 MR. DAVIS: No, not at all. And that's what the

24 Second Circuit said.

25 THE COURT: And Apple is publicly traded; QIL is not.